

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Rulemaking to Amend Parts 1, 2, 21 and 25)
of the Commission's Rules to Redesignate)
the 27.5-29.5 GHz Frequency Band, to)
Reallocate the 29.5-30.0 GHz Frequency Band,)
and to Establish Rules and Policies for Local)
Multipoint Distribution Service and for)
Fixed Satellite Services)

CC Docket No. 92-297

Fifth Notice of Proposed Rulemaking)

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*Federal Communications Commission
Office of Secretary*

COMMENTS OF TEXAS INSTRUMENTS, INC.

I. INTRODUCTION

Texas Instruments, Inc. ("TI"), by its attorneys, hereby submits its comments in the above-captioned Fifth Notice of Proposed Rulemaking ("Fifth Notice").¹ This rulemaking is being conducted concurrently with preparations for the long awaited auction of LMDS spectrum, an auction that will allocate 1300 MHz of spectrum in each community in the U.S. for a wide range of two-way telecommunications services. TI applauds the Commission for enabling the launch of this promising communications service. As the Commission has recognized, LMDS has a remarkable potential to facilitate relatively low-cost competition to incumbent local exchange carriers ("LECs") and cable companies in the provision of services to consumers.

¹ Rulemaking to Amend Parts 1, 2, 21 and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, and to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services (Second Report and Order and Fifth Notice of Proposed Rulemaking), CC Docket No. 92-267, FCC 97-82 (March 13, 1997) ("Second Order" or "Fifth Notice").

TI also applauds the Commission for its decision to give LMDS licensees remarkable flexibility in the use of their spectrum. Licensees have substantial leeway with respect to the technical configuration of their system, the mix of services provided, the regulatory regime (i.e.: common carrier, or otherwise) under which services are distributed, and the build out schedule for providing substantial service. The Commission has also given LMDS licensees the flexibility to disaggregate and partition spectrum.² In this respect, the Commission issued a Fifth Notice seeking comment on what, if any limits should be placed on disaggregation and partitioning. For example, the Commission inquired whether, “given any unique characteristics of LMDS, technological and administrative considerations” it would be appropriate to set a ceiling on the maximum permissible amount of disaggregation for LMDS licensees.³

Throughout the LMDS proceeding, TI has been a vocal supporter of unfettered flexibility in the deployment and regulation of LMDS. TI has become concerned, however, that while the Commission’s flexible rules may aid in the efficient development of LMDS, they may also encourage speculators to obtain LMDS licenses in order to subdivide and broker the sizable 1,150 MHz spectrum block. Thus, TI believes that it would be in the public interest for the Commission to establish a rule that while LMDS licensees may freely disaggregate spectrum, licensees must retain a predominant share of their spectrum for the provision of broadband LMDS. Such a spectrum usage requirement would act as a significant deterrent to speculators, while in no way encumbering the business plans of legitimate LMDS licensees.

² *Id.* at ¶ 145.

³ *Id.* at ¶ 414.

II. IN ORDER TO DETER SPECULATORS, THE COMMISSION SHOULD PERMIT DISAGGREGATION OF SPECTRUM, BUT SHOULD REQUIRE LICENSEES IN THE 1,150 MHz BLOCK TO RETAIN A PREDOMINANT SHARE OF THEIR SPECTRUM FOR USE IN PROVIDING BROADBAND LMDS.

The Commission's primary intent in authorizing LMDS was to facilitate low-cost competition for incumbent LECs and cable operators. As TI noted throughout this proceeding, LMDS has the capability to provide full-service two-way communications services including video, data and traditional telephone to homes and offices. The potential for LMDS to flourish as a competitive service could be diminished, however, if LMDS licenses are diverted to parties that are primarily interested in speculating in spectrum. The principal characteristics of the 1,150 MHz spectrum block that make it optimal for LMDS – its significant size and flexible service rules – make it equally attractive to speculators. Thus, in order to deter speculators without encumbering legitimate LMDS licensees, the Commission should adopt a spectrum usage requirement which limits disaggregation by requiring LMDS licensees to retain a predominant share of their spectrum for the provision of broadband LMDS.

A limitation on spectrum disaggregation would significantly deter potential speculators, while doing nothing to interfere with the business plans of legitimate LMDS operators. Licensees would still be free to disaggregate substantial segments of spectrum. Additionally, the limitation may aid legitimate LMDS licensees by reducing the possibility that the LMDS auction will be dominated by bidders seeking to obtain spectrum for non-LMDS purposes. While the Commission adopted certain measures in the Second Order designed to discourage speculation, the rules may be insufficient to remedy the problem. For example, the Commission's upfront payment requirement may not act as a deterrent because speculators are likely to be as well financed as perspective LMDS operators. Additionally, the Commission's flexible build out rule

– while appropriate due to the undeveloped nature of LMDS equipment – encourages long-term arbitrage by giving speculators ten years in which to attempt to gain a waiver of the rule, or assign its obligation to another party.⁴

The public interest factors that support adoption of a spectrum usage requirement for LMDS are strikingly similar to those that prompted the Commission to adopt a nearly identical spectrum usage restriction for the direct broadcast satellite (“DBS”) service. Like LMDS, DBS has been recognized by the Commission as a serious potential competitor to existing wire-based distribution systems, such as cable television systems.⁵ Thus, because of the Commission’s “commitment to promoting [DBS] as an important competitor in the MVPD market,”⁶ the Commission wisely chose to limit the ability of DBS operators to provide non-DBS services by requiring that DBS licensees must ultimately use a predominant share of their authorized spectrum for the provision of DBS services to U.S. consumers.⁷

The Commission should adopt a similar requirement for LMDS. In order to ensure that LMDS remains a viable broadband competitor to both LECs and cable systems, the Commission should place a ceiling on the disaggregation of LMDS spectrum by requiring that licensees retain

⁴ Furthermore, a speculator may be able to satisfy the strict language of the Commission’s build out requirement by retaining control of a small portion of the 1,150 MHz spectrum block and using it to operate a “niche” point-to-multipoint communications service that technically would be available to a substantial portion of a licensed service area.

⁵ Additionally, DBS involves a relatively large segment of spectrum (1000 MHz total for send and receive signals).

⁶ See *Direct Broadcast Satellite Service*, IB Docket No. 95-168, ¶ 16 (Dec. 15, 1995).

⁷ The rules permit DBS licensees to engage in unrestricted use of their assigned spectrum during the first half of the license term, but require that at least half of a licensee’s total capacity be used for the provision of DBS services after the first five years. *Id.* at ¶ 17.

at least a predominant portion of their spectrum for the provision of broadband LMDS.⁸ Such a disaggregation cap would do nothing to reduce the substantial flexibility that the Commission has provided to LMDS operators through the Second Order. Instead, a predominant usage requirement would only encumber the business plans of pure speculators -- entities that seek LMDS licenses with no valid intention of providing LMDS services to consumers.

III. CONCLUSION

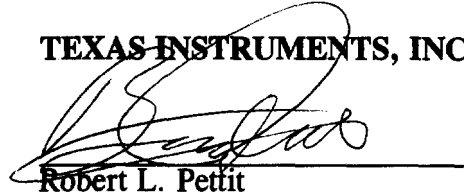
Throughout the development of the LMDS service, TI has urged the Commission to create flexible rules that will permit this innovative technology to evolve into an efficient and cost effective means of providing broadband two-way communications services to consumers. TI congratulates the Commission for achieving this goal, and for taking steps towards auctioning LMDS licenses to operators. TI is concerned, however, that the remarkable flexibility incorporated in the LMDS rules may be equally attractive to speculators, parties that could impair the development of LMDS services by subdividing and brokering the spectrum for unrelated uses. Thus, TI requests that the Commission discourage speculators from participating in the LMDS auction by requiring LMDS licensees to retain a predominant share of their

⁸ In requesting that the Commission place a limit on disaggregation of LMDS spectrum, TI acknowledges that the Commission has, in at least two prior proceedings, considered and rejected a disaggregation ceiling. For example, the Commission declined to place limits on the disaggregation of spectrum in the wireless communication service ("WCS"), *see Wireless Communications Service*, GN Docket No. 96-228, FCC 97-50 (Feb. 19, 1997), and in the commercial mobile radio services ("CMRS"). *See Commercial Mobile Radio Services*, 5 Comm. Reg. (P & F) 634 (Dec. 20, 1996). While these decisions may have been appropriate for WCS and CMRS, they are not appropriate for LMDS. WCS and CMRS involve relatively small segments of spectrum and an extremely competitive market structure that ensures that substantial disaggregation by a WCS or CMRS licensee will have little or no impact on the general availability of wireless mobile services in a community. In contrast, LMDS involves a substantial block of spectrum, the breadth of which was necessary in order to enable LMDS operators to inject competition in the concentrated markets for local exchange and cable television services.

authorized spectrum for the provision of broadband LMDS services. Such a rule would be a significant deterrent to speculation, while in no way encumbering the business plans of legitimate LMDS licensees.

Respectfully submitted,

TEXAS INSTRUMENTS, INC.

A handwritten signature in black ink, appearing to read "Robert L. Pettit", is written over a horizontal line.

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